No. 06-1150

FILED
MAR 23 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The Supreme Court of the United States

MICHELE ECKELBERRY,
in her capacity as beneficiary,

Petitioner,

v.

RELIASTAR LIFE INSURANCE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

Donald M. Lewis
Counsel of Record
Bradley J. Betlach
Mark J. Girouard
HALLELAND LEWIS NILAN & JOHNSON, PA
600 U.S. Bank Building
220 South Sixth Street
Minneapolis, MN 55402-4501
(612) 338-1838

Counsel for Respondent

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

I

QUESTION PRESENTED

This case involves a claims decision under an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* The question presented is as follows:

Whether Respondent ReliaStar Life Insurance Company reasonably denied Petitioner Michele Eckelberry's claim for accidental death benefits under the Plan where it was undisputed that the insured died as a result of driving while legally intoxicated, where the Plan defined "accident" as "an unexpected and sudden event which the insured does not foresee," and where the Plan granted ReliaStar final discretionary authority to interpret and construe the Plan and make claim determinations?

II

CORPORATE DISCLOSURE STATEMENT

ReliaStar Life Insurance Company is a wholly-owned subsidiary of Lion Connecticut Holdings, Inc., which is a wholly-owned subsidiary of ING America Insurance Holdings, Inc., which is a wholly-owned subsidiary of ING Insurance International B.V. (Netherlands), which is a wholly-owned subsidiary of ING Verzekeringen N.V. (Netherlands), which is a wholly-owned subsidiary of ING Groep N.V. (Netherlands), a publicly-held company.

TABLE OF CONTENTS

Opinions Below 1
Jurisdiction 1
Statement 1
Argument 5
Conclusion 16

TABLE OF AUTHORITIES

Cases:

Baker v. Provident Life and Accident Ins. Co., 171 F.3d 939 (4th Cir. 1999) 12
Bernstein v. CapitalCare, Inc., 70 F.3d 783 (4th Cir. 1995) 7
Cozzie v. Metro. Life Ins. Co., 140 F.3d 1104 (7th Cir. 1998) 13, 15
Critchlow v. First UNUM Life Ins. Co., 378 F.3d 246 (2nd Cir. 2004) 11
King v. Hartford Life & Accident Ins. Co., 357 F.3d 840 (8th Cir. 2004) 11
King v. Hartford Life & Accident Ins. Co., 414 F.3d 994 (8th Cir. 2005) 11
Metropolitan Life Ins. Co. v. Henkel, 234 F.2d 69 (4th Cir. 1956) 12
Padfield v. AIG Life Ins. Co., 290 F.3d 1121 (9th Cir. 2002) 11

Cases—Continued:

Pilot Life Ins. Co. v. Ayers, 163 F.2d 860 (4th Cir. 1947) 12
Poeppel v. Hartford Ins. Co., 87 Fed. Appx. 885, 2004 WL 298414 (4th Cir. 2004) 12
Watson v. Unum Life Ins. Co., 126 Fed. Appx. 604, 2005 WL 665055 (4th Cir. 2005), *cert. denied* 126 S. Ct. 373 (2005) 12
Wickman v. Northwestern Nat'l Ins. Co., 908 F.2d 1077 (1st Cir. 1990) ..... 8, *passim*
Zurich General Accident & Liability Ins. Co., 33 F.2d 853 (4th Cir. 1929) 12

Statutes:

28 U.S.C. § 1254(1) 1
28 U.S.C. § 1331 2
29 U.S.C. § 1001 *et seq* 1
29 U.S.C. § 1132(e) 2

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-16a) is reported at 469 F.3d 340. The decision of the district court (Pet. App. 19a-43a) is reported at 402 F. Supp. 704.

JURISDICTION

The judgment of the court of appeals was entered on November 17, 2006 (Pet. App. 1a-2a). The petition for writ of certiorari was filed on February 14, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

1. Petitioner's Claim.

Petitioner Michele Eckelberry ("Petitioner") filed this lawsuit against Respondent ReliaStar Life Insurance Company ("ReliaStar") in West Virginia state court, seeking declaratory relief under West Virginia law. In her lawsuit, Petitioner sought $86,000 in accidental death benefits arising out of the death of Earl Eckelberry ("Eckelberry"), who was insured under an employee welfare benefit plan issued to his employer by ReliaStar (the "Plan"). ReliaStar removed the matter to the United States District Court for the Southern District of West Virginia, which had federal-question

jurisdiction under ERISA, 29 U.S.C. § 1132(e), and 28 U.S.C. § 1331.

Eckelberry died after losing control of his vehicle and crashing it into a tractor trailer, which was parked eight feet beyond the highway shoulder.[1] Pet. App. 4a-5a, 12a. Eckelberry's blood alcohol content at the time of the collision was .15 percent – 50 percent above West Virginia's then legal limit. Pet. App. 5a, 12a. The collision occurred at 3:49 a.m. Pet. App. 5a, 12a. Eckelberry was not wearing a seat belt. Pet. App. 5a, 12a.

2. ReliaStar's Claims Determination.

The Plan defines "accident" as "an unexpected and sudden event which the insured does not foresee," and provides that ReliaStar has "final discretionary authority * * * to interpret and construe the terms" of the insurance policy. Pet. App. 5a. In reviewing Petitioner's claim for accidental death benefits, ReliaStar analyzed the applicable Plan language, the West Virginia Traffic Crash Report, the Toxicology Report, the West Virginia Office of the Chief Medical Examiner's Report, and the Death Certificate. Pet. App. 5a., 31a. As those reports made clear, Eckelberry's car crash was "perfectly consistent with his inebriated state." Pet. App. 11a. The Toxicology Report explained, for example, that the "[t]ypical effects" of a blood-alcohol

[1] Despite Petitioner's statement to the contrary (Pet. 3), there is no evidence in the record that the tractor trailer was "illegally parked."

concentration of 0.15 percent include "blurred vision, loss of motor coordination and impaired judgment." Pet. App. 12a.

ReliaStar denied Petitioner's claim for accidental death benefits, concluding that because Eckelberry died as a result of driving while legally intoxicated, his death was not "unexpected" and, therefore, not an "accident" as defined by the Plan. Pet. App. 5a. ReliaStar's Appeals Committee affirmed, finding that Eckelberry had "put himself in a position in which he should have known that injury or death would occur[,]" because by driving under the influence, he "knowingly pu[t] [him] sel[f] at risk for serious injury or death." Pet. App. 5a-6a.

Despite Petitioner's suggestion that the decision of ReliaStar should have been based on "hard statistical evidence" (Pet. App. 6), Petitioner never submitted any statistical evidence to ReliaStar and, therefore, no statistical evidence was contained in the administrative record.

3. The Decisions of the Courts Below.

In the district court, the parties stipulated that because the Plan contained express language conferring discretion on ReliaStar to interpret and construe the terms of the insurance policy, the district court should apply an abuse of discretion standard of review. Pet. App. 21a. The parties brought cross motions for summary judgment based solely upon the administrative record. The district court granted Petitioner's motion for summary judgment and denied ReliaStar's cross motion, concluding that ReliaStar's interpretation of the Plan

and its decision to deny accidental death benefits were unreasonable. The district court based its conclusion in large part on statistical evidence that was neither part of the administrative record nor, for that matter, submitted to the district court by the parties. Pet. App. 32a-33a. In so doing, the district court afforded ReliaStar's decision none of the deference it was due, and instead substituted its own judgment for that of ReliaStar.

The court of appeals reversed, holding that "under the policy as written" and "the circumstances" surrounding Eckelberry's death, it was "reasonable for ReliaStar to conclude that because the insured 'put himself in a position in which he should have known serious injury or death could occur' his death was not 'unexpected.'" Pet. App. 16a. As the circuit court noted, ReliaStar's conclusion found "considerable support in the record." Pet. App. 11a. Indeed, it was supported by "[b]oth the facts and the inferences that could reasonably be drawn from them," which were "uncontradicted by any evidence submitted on [Petitioner]'s behalf." Pet. App. 11a.

In reaching this decision, court of appeals explicitly limited the scope of its holding, stating:

> Finally, we emphasize the boundaries of our holding. We do not suggest that plan administrators can routinely deny coverage to insureds who engage in purely negligent conduct or, for example, to anyone that speeds. In fact, accident insurance is often purchased to cover negligence at its most typical.
>
> * * *

> Although some courts have suggested that car crashes caused by drunk driving can never be accidents, *we cannot anticipate every future set of circumstances and do not adopt a per se rule*. Rather, it is well settled that a plan fiduciary must assess all of the facts and circumstances attending a claim, afford the insured adequate opportunity to address the causes and circumstances surrounding any occurrence, and make a reasoned, principled assessment supported by substantial evidence. Here, however, the undisputed facts presented to the Plan administrator go a long way toward establishing that the insured's death was not accidental.
>
> We in no sense intend to make light of the loss that plaintiff has suffered. We simply confirm as a matter of law that the Plan administrator's ruling was a reasonable one under the policy as written.

Pet. App. 15a-16a (emphasis added) (citations omitted).

ARGUMENT

1. This ERISA Claims Decision does not Present an Important Federal Question Warranting Supreme Court Review.

Petitioner has characterized the question presented as follows: "When a person is negligent, to any degree, in causing an automobile wreck that results in [his or her] death, has that person died as a result of an accident?" Pet. i. This characterization of the purported issue is terribly

misleading. As the court of appeals went to great lengths to stress in its opinion, it did not establish a *per se* rule under which deaths involving negligent operation of motor vehicles could never be held to be accidental. Pet. App. 15a. Indeed, it declined to hold even that car crashes caused by drunk driving could never be accidents. Pet. App. 15a-16a.

Instead, the court of appeal's decision reflects an understanding of the inherently fact-specific nature of ERISA benefits claims, which must be analyzed and resolved on a case-by-case basis. Further, it reflects an understanding of the paramount importance of the applicable policy language in that analysis, and that the outcome of a given case will be impacted significantly by the applicable standard of review. Notwithstanding Petitioner's suggestion to the contrary, the court of appeal's decision was limited to a holding that under the language of this Plan, the facts of this case, and the applicable standard of review, it was reasonable for ReliaStar to conclude that Eckelberry's death was not an accident. Pet. App. 16a.

Despite the fact- and case-specific nature of ERISA benefits determinations, Petitioner argues that the court of appeals should have applied a universal definition of "accident" that excludes only those deaths that, based on statistical evidence, are "highly likely" to occur. Thus, ironically, Petitioner would have this Court accept review in order to achieve what she wrongly believes the court of appeals to have done; that is, to create a *per se* rule applicable to all ERISA benefits claims relating to automobile deaths.

Not only is Petitioner's argument ironic, it is flawed for two reasons. First, a *per se* rule is inappropriate given the unique facts, policy language, and level of discretion that exist in each ERISA benefits claim that presents itself. Second, under the applicable, modified abuse-of-discretion standard, the district court and court of appeals were limited to the evidence that was before the plan administrator at the time of the decision. *See Bernstein v. CapitalCare, Inc.*, 70 F.3d 783, 788 (4th Cir. 1995). For this reason, Petitioner's argument that the court of appeals should have adopted a standard based on "hard statistical evidence" is misplaced. Pet. 6. The statistical evidence on which she relies was never presented to the plan administrator and, as a result, should play no part in any court's decision. That the court of appeals chose not to follow the district court in improperly relying on statistics that were not part of the administrative record does not mean that the court of appeals somehow erred by "fail[ing] to address them." Pet. 5. Instead, it reflects the court of appeals' recognition that its consideration must be limited to the evidence that was before ReliaStar at the time of the decision.

The court of appeal's decision was necessarily constrained to the unique facts of this case, the language of the Plan, and the applicable standard of review. The court of appeal's conclusion—that based on the facts, ReliaStar made a reasonable decision under the Plan—simply does not present an important issue warranting this Court's review.

2. The Court of Appeal's Decision is not in Conflict with the Decisions of another United States Court of Appeals.

Petitioner's contention that there is a split among the circuits, and even within the Fourth Circuit Court of Appeal's own decisions, is incorrect. Petitioner bases this contention on her belief that the circuit courts of appeals have inconsistently applied a framework articulated by the First Circuit in *Wickman v. Northwestern Nat'l Ins. Co.*, 908 F.2d 1077 (1st Cir. 1990). This argument warrants a closer look at the actual holding of that case.

As an initial matter, it is important to note that *Wickman* was decided more than fifteen years ago, when "[t]he federal common law of insurance benefits" was "still in its formative stage." *Id.* at 1084. The question before the First Circuit was one of first impression, calling upon it to examine the "emerging jurisprudence of ERISA." *Id.* at 1079. Its first foray into this area has since guided other courts in analyzing questions of coverage under accidental death insurance policies, but was by no means the final word on the subject.

According to Petitioner, the "*Wickman* test" defines the term "accident" to exclude from coverage only those injuries that a reasonable person would have viewed as "highly likely" to occur. But to consider this to be the "*Wickman* test" misses the point of the First Circuit's decision. The court did not set forth to establish a generally applicable definition of "accident." Indeed, the term was already defined in the policy as an "unexpected event." The question

before the First Circuit was whether the district court had erroneously applied that definition to the facts surrounding the insured's death. In so doing, the court attempted to formulate an analytical framework that would enable it to "prevent unrealistic expectations from undermining the purpose of accident insurance." *Id.* at 1088.

Thus, under *Wickman*, if it is possible to ascertain that the decedent actually did not expect an injury similar in type or kind to that suffered, the court then asks whether the "suppositions which underlay that expectation were reasonable." *Id.* But acknowledging the inherent difficulty of ascertaining the "subjective state of mind" of a decedent, as it "cannot be generally known," the court stated that when the decedent's actual expectations cannot be ascertained, the fact finder should then proceed with an objective analysis. *Id.* Applying that analysis, the court asked whether a reasonable person, standing in the insured's shoes, "would have viewed the injury as highly likely to occur as a result of the insured's intentional conduct." *Id.* The court noted that this inquiry "serve[d] as a good proxy for" the relevant question under the policy; namely, what was the insured's "actual expectation." *Id.*

Despite the court's use of the phrase "highly likely," there is nothing talismanic about that formulation. Notably, the *Wickman* decision did not turn on whether a reasonable person in Wickman's shoes would have viewed death as "highly likely" to occur. Instead, the court focused on the reasonableness of his expectations. *See id.* at 1089

("Objectively, he reasonably should have expected serious injury").

As the court of appeals recognized, in the years since *Wickman* was decided, different courts have applied the second, objective prong of its analytical framework in different ways. *See* Pet. App. 9a. This does not mean, however, that there is a split among the circuits. Indeed, to conclude that there was a split would require reading *Wickman* to define "accident" in a universal sense, applicable in all cases. This is not what *Wickman* purported to do, and given the highly fact-intensive nature of ERISA benefits claims, it would be inappropriate for any court to attempt to do so. All that can be gleaned from the varying formulations of the "*Wickman* test" is that, in assessing the objective reasonableness of a decedent's expectations under the particular facts of some cases, a definition of accident focusing on whether injury is "highly likely" to occur has represented an appropriate exercise of the plan administrator's discretion, (Pet. App. 9a, n.1), while under the particular facts of other cases, a definition of accident focusing on whether injury is "reasonably foreseeable" has been held to be appropriate. Pet. App. 9a, n.1. As *Wickman* itself demonstrates, these two formulations of "accident" are often intertwined. *See Wickman*, 908 F.2d at 1088-89 (discussing both whether serious injury was "highly likely" to occur and whether decedent "reasonably should have expected serious injury").

Furthermore, Petitioner's statement that other circuits have rejected an approach that defines "accident" in terms of

reasonable foreseeability is simply incorrect. With respect to the Eighth Circuit, Petitioner relies on that court's decision in *King v. Hartford Life & Accident Ins. Co.*, 357 F.3d 840 (8th Cir. 2004) ("*King I*"). Although she notes that the Eighth Circuit granted rehearing *en banc*, she fails to acknowledge that in granting rehearing, the Eighth Circuit vacated that decision. *See id.* at 840. On rehearing, the Eighth Circuit simply did not reach the issue of the reasonableness of the plan administrator's definition of accident. *See King v. Hartford Life & Accident Ins. Co.*, 414 F.3d 994 (8th Cir. 2005). *Padfield v. AIG Life Ins. Co.*, 290 F.3d 1121 (9th Cir. 2002), also relied on by Petitioner, is also inapposite, as it involved a policy's exclusions for "suicide" and "intentionally self-inflicted injuries," not its definition of accident. Petitioner's reliance on *Critchlow v. First UNUM Life Ins. Co.*, 378 F.3d 246 (2nd Cir. 2004), is similarly unavailing. In that case, the Second Circuit concluded, applying *de novo* review to the particular facts of that case, that the insured's death was not an accident. Specifically, the fact that the deceased had "set up an elaborate escape mechanism" established that he had a "subjective expectation of survival," which expectation was "objectively reasonable." *Id.* at 264. Thus, that case turned on the first, rather than the second, prong of the *Wickman* framework. It is notable too that in *Critchlow*, the court declined to adopt a "precise formulation . . . to be applied in all ERISA cases." *Id.*

Petitioner's contention that the Fourth Circuit Court of Appeals has itself "taken inconsistent positions" (Pet. 12) is

also incorrect. Petitioner cites in support of this proposition three pre-ERISA decisions, *Metropolitan Life Ins. Co. v. Henkel*, 234 F.2d 69 (4th Cir. 1956), *Pilot Life Ins. Co. v. Ayers*, 163 F.2d 860 (4th Cir. 1947), and *Zurich General Accident & Liability Ins. Co.*, 33 F.2d 853 (4th Cir. 1929). Each of those cases involved state laws which, unlike the common law that has developed under ERISA, recognized a distinction between "accidental means" and "accidental results." *See Wickman*, 908 F.2d at 1086 (rejecting analytical framework based on distinction between "accidental means" and "accidental results"). Unlike those inapposite prior decisions, the court of appeal's more recent decisions have been consistent in holding that, where supported by language in the applicable policy and the particular facts in the administrative record, the "reasonably foreseeable" formulation can be a reasonable interpretation of the term accident, as is reflected by its decisions in the instant case and in *Baker v. Provident Life and Accident Ins. Co.*, 171 F.3d 939 (4th Cir. 1999), *Poeppel v. Hartford Ins. Co.*, 87 Fed. Appx. 885, 2004 WL 298414 (4th Cir. 2004), and *Watson v. Unum Life Ins. Co.*, 126 Fed. Appx. 604, 2005 WL 665055 (4th Cir. 2005), *cert. denied* 126 S. Ct. 373 (2005).

3. The Court of Appeal's Decision was Based on a Correct Application of the Law to the Undisputed Facts and, therefore, Supreme Court Review is not Warranted.

Operating under the misapprehension that the "*Wickman* test" imposes a single definition of "accident," the district court, and Petitioner, conclude that the court of appeals and the Seventh Circuit, in *Cozzie v. Metro. Life Ins. Co.*, 140 F.3d 1104 (7th Cir. 1998), lowered the standard from one of whether an injury was "highly likely" to occur to one of whether the injury was "reasonably foreseeable." This conclusion is flawed because, as explained above, the "*Wickman* test" is merely a framework for analyzing the objective reasonableness of an insured's expectations; it does not purport to conclusively define accident in all cases regardless of a Plan's express definition of accident, the level of deference granted the Plan's administrator, or the specific facts underlying the claim.

In light of the particular language of this Plan, which expressly defined "accident" as "an unexpected and sudden event which the insured does not foresee" (Pet. App. 5a), and the unique facts underlying Eckelberry's death, the court determined that it was reasonable for ReliaStar to conclude that because he "'put himself in a position in which he should have known that serious injury or death could occur,' his death was not 'unexpected.'" Pet. App. 16a. As the court noted, Eckelberry's car crash was "perfectly consistent with his inebriated state." Pet. App. 11a. "While under the

influence of alcohol, [he] lost control of his vehicle at 3:49 a.m. and ran headlong into a parked semi-trailer located eight feet beyond the highway shoulder[;]" his "blood-alcohol concentration was 0.15 percent -50 percent higher than the [then] legal limit." Pet. App. 11a-12a.

In assessing whether "a reasonable person in [Eckelberry's] shoes would have expected the result," *Wickman*, 908 F.2d at 1089, ReliaStar was entitled to take into account the criminal consequences that often attach to the decision to drive while intoxicated, which consequences stem, in part, from the widely recognized fact that driving while intoxicated threatens the life of the impaired driver and the lives of other motorists. Pet. App. 13a. That ReliaStar, and the court of appeals, took account of those widely recognized dangers does not, as Petitioner argues, represent the elevation of moral value over "hard statistical evidence." Pet. 6. Again, it is important to remember that Petitioner presented no statistical evidence to ReliaStar. But regardless, as the court of appeals explained, a definition of "accident" that excluded only those results that were statistically proven to be "highly likely" would bring within the definition of accident a range of activities that a reasonable person would expect to result in serious harm, even if such harm was not "highly likely."

In this regard, the court of appeal's analogy to a game of Russian Roulette is particularly apt. *See* Pet. App. 13a-14a. As the court noted, "while an insured may not intend to die when he places a single cartridge into a pistol, spins the cylinder, places the gun to his forehead, and pulls the trigger,

such a result is not just an unfortunate accident." Pet. App. 12a. Nor is death highly likely, given the actual odds. Yet a reasonable person should, nonetheless, expect that result. Likewise, the well-established dangers of driving while intoxicated inform a reasonable person of the foreseeable results of that activity; namely, that the impaired driver and others could suffer serious harm, including death.

Finally, contrary to Petitioner's suggestion, ReliaStar's decision to deny benefits under the circumstances of this case does not undermine the purpose of ERISA. As the Seventh Circuit explained in *Cozzie*:

> Whenever a plan fiduciary determines that benefits are not owed under particular circumstances, it does, from the perspective of the claimants in that case, frustrate the purpose of providing assistance. However, as with all insurance arrangements, the plan fiduciary or administrator must ensure that payments are reserved for those who truly fall within the terms of the policy. Otherwise, the financial health of the pooled assets is jeopardized and the cost of providing recovery for future applicants owed assistance is escalated. We cannot say, therefore, that [the insurer's] determination that the purposes of the plan are best served by acknowledging a qualitative difference between the ingestion of a huge quantity of alcohol and other tragedies of human life which do not involve such a significant assumption of a known risk by the insured is incompatible with the goals of the plan.

Cozzie, 140 F.3d at 1110.

As the court of appeals appropriately noted, it was not its role to "search for the best interpretation of [the P]lan or even for one we might independently adopt[,]" but rather to determine whether the plan administrator's decision was a reasonable one under the policy as written. Pet. App. 6a-7a. Its determination that ReliaStar's decision was a reasonable one under the Plan simply does not represent the type of important issue warranting this Court's attention.

CONCLUSION

The court of appeal's decision reflects an understanding of the inherently fact-specific nature of ERISA benefits claims, which must be analyzed and resolved on a case-by-case basis, the paramount importance of applicable policy language in that analysis, and that the outcome of a given case will be impacted significantly by the applicable standard of review. The court of appeal's decision was limited to a holding that under the facts of this case, the language of this particular Plan, and the applicable standard of review, it was reasonable for ReliaStar to conclude that the insured's death was not an accident. This determination simply does not warrant review by the United States Supreme Court. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

Donald M. Lewis
Counsel of Record
Bradley J. Betlach
Mark J. Girouard
HALLELAND LEWIS
NILAN & JOHNSON, PA
600 U.S. Bank Building
220 South Sixth Street
Minneapolis, MN 55402-4501
612-338-1838

MARCH 23, 2007